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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-215274

DATE: June 11, 1984

MATTER OF: Mayrant Constructors, Inc.

DIGEST:

1. Correction of a bid mistake which would result in displacement of other bidders may be effected only where the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid, without resort to other outside documentation.
2. Where a telegraphic modification erroneously increased bid by \$449,668, rather than by \$49,668, as allegedly intended, and the intended increase may only be ascertained by recourse to a second telegram, delivered after bid opening, correction which would displace other bidders may not be permitted.
3. Protest is denied without obtaining report from agency since, even if all of the protester's allegations are considered to be correct, there would still be no legal basis for providing the relief requested.

Mayrant Constructors, Inc. (Mayrant), protests the award of a construction contract by the General Services Administration (GSA) to any other bidder under solicitation No. GS-04B-84033. Mayrant asserts that it submitted the low responsive bid, but that GSA improperly declined to permit Mayrant to correct an obvious mistake in its bid.

We find the protest without merit.

Mayrant originally submitted a bid of \$250,000. On April 4, 1984, approximately 2-1/2 hours prior to bid opening, Mayrant sent a Western Union TWX to GSA, intending to increase its bid by \$49,668, for a total bid of \$229,668. However, the TWX, which was received by GSA prior to bid opening, read "increase our bid by 449,668.00." Applying this increase, GSA found that Mayrant's bid of \$699,668 was the apparent high bid. GSA also received a second TWX from Mayrant, the day after bid opening, which read "increase our bid by \$49,668.00."

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Mayrant initially timely protested to GSA. GSA determined that there was no evidence that the \$49,668 figure was actually given to Western Union by Mayrant and was transmitted incorrectly by Western Union. Accordingly, GSA found that since the original modification was the only timely modification, Mayrant's bid of \$699,668 could not be corrected.

Mayrant protested to our Office. Mayrant argues that the contracting officer had constructive notice of the mistake in the modification because the erroneous TWX alone increased Mayrant's bid by almost 200 percent, and the modification itself was higher than any of the other five bids submitted. Mayrant further asserts that the original modification telegram did not contain a dollar symbol before the amount, which Mayrant alleges supports its contention that the first numeral should have been a dollar sign, not a 4. Mayrant also points out that it did not send a second telegram and, therefore, argues that the second transmission must be attributed to the fact that Western Union realized the error in the transmission and sent a followup message to correct its error. Mayrant contends that this constitutes an obvious admission of error by Western Union and clear evidence that the figure of \$49,668 was actually given to Western Union and was transmitted incorrectly by Western Union.

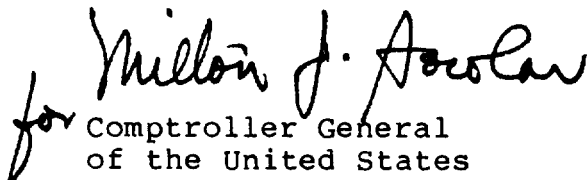
To permit correction of Mayrant's alleged mistake would displace other bidders. Accordingly, Federal Procurement Regulations, 41 C.F.R. §§ 1-2.406-3(a)(1) and (3) (1983), are both applicable. Under the first of these provisions, an agency may permit a bidder to correct a mistaken bid after bid opening only when the bidder presents clear and convincing evidence of both the existence of a mistake and of the actually intended bid. The second provision requires that where correction would result in displacement of another bidder, the intended bid must be ascertainable from the bid itself.

In deciding cases involving bid corrections which would displace the low bidder, we generally have examined the degree to which the asserted correct bid is the only reasonable interpretation, ascertainable substantially from the bid itself, of the claimed mistake. Ideker, Inc., B-194293, May 25, 1979, 79-1 CPD 379. For instance, we have denied correction where there was no way to tell from

the bid whether a unit price or its discrepant total was correct and either would have been reasonable. Broken Lance Enterprises, Inc., 57 Comp. Gen. 410 (1978), 78-1 CPD 279. Conversely, we have permitted correction of a unit price to correspond to an extended total where the total price represented the only reasonable alternative. See East Bay Auto Supply, Inc., B-192012, September 5, 1978, 78-2 CPD 170. The critical element is that the intended bid be ascertainable from the bid itself. See Marine Ways Corporation, B-211788, August 29, 1983, 83-2 CPD 271.

In this instance, there is no way in which the protester's alleged intended bid may be ascertained from the bid itself, including the timely received modification. Even if the protester's allegations are presumed to be correct, the most that can be said is that the contracting officer should have been on constructive notice that a mistake had been made, and Western Union appears to have been responsible for the mistake. However, there is no evidence other than the second TWX--which arrived after bid opening and, thus, was not part of Mayrant's eligible, timely bid--which could possibly have permitted GSA to determine the actual bid intended by Mayrant. The extraneous information provided in the second telegram, like worksheets, may not be considered in determining whether the lower bids should be displaced. DaNeal Construction, Inc., B-208469, December 28, 1982, 82-2 CPD 584.

Accordingly, we deny the protest without obtaining an agency report since on its face the protest is clearly without merit. 4 C.F.R. § 21.3(g) (1983).

for 
Comptroller General
of the United States